

REMARKS

Claims 1-33 remain in the application. Reconsideration of the application is hereby requested in view of the comments made below.

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In Section 2 of the Office Action, the Examiner rejected claims 12 and 21 under 35 USC 102(e) as being anticipated by Hirotsune et al. Applicant is submitting a declaration under 37 CFR 1.131 to antedate this reference.

Accordingly, claims 12 and 21 are believed patentable over the art made of record. Withdrawal of this rejection is respectfully requested.

In Section 4 of the Office Action, the Examiner rejected claims 1-3, 5, 7, 10-11, 22-24, 26, 28-29, and 32 under 35 USC 103(a) as being unpatentable over Hirotsune et al. in view of Heemskerk et al. As noted above, Applicant is submitting a declaration under 37 CFR 1.131 to antedate the Hirotsune reference. Accordingly, claims 1-3, 5, 7, 10-11, 22-24, 26, and 32 are believed patentable over the art made of record. Withdrawal of this rejection is respectfully requested.

In Section 5 of the Office Action, the Examiner rejected claims 6 and 9 under 35 USC 103(a) as being unpatentable over Hirotsune et al. in view of Heemskerk et al. and further in view of Kahle. As noted above, Applicant is submitting a declaration under 37 CFR 1.131 to antedate the Hirotsune reference. Accordingly, claims 6 and 9 are believed patentable over the art made of record. Withdrawal of this rejection is respectfully requested.

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In Section 6 of the Office Action, the Examiner rejected claims 27 and 30 under 35 USC 103(a) as being unpatentable over Hirotsune et al. in view of Heemskerk et al. and further in view of Wen et al. As noted above, Applicant is submitting a declaration under 37 CFR 1.131 to antedate the Hirotsune reference. Accordingly, claims 27 and 30 are believed patentable over the art made of record. Withdrawal of this rejection is respectfully requested.

In Section 7 of the Office Action, the Examiner rejected claims 1-5, 7-8, 10-16, 19-22, 24, and 26 under 35 USC 103(a) as being unpatentable over Honda et al. in view of Heemskerk et al. Applicant is submitting a declaration under 37 CFR 1.131 to antedate the Honda reference. The Examiner states that Honda et al is an acknowledged prior art, however, Applicant respectfully traverses this statement. Applicant has not stated that Honda is prior art and in fact has

submitted a previous declaration in the parent case swearing behind the Honda reference. Although the Examiner stated that the declaration was not sufficient to overcome the Honda reference, Applicant filed a continuation off the parent case with a new declaration showing more facts to overcome the Honda reference.

5 Perhaps the Examiner is asserting that a failed attempt to antedate a prior art reference constitutes an admission that the prior art truly renders the subject matter of the application unpatentable. If so, this argument has no merit. The Federal Circuit in Credle v. Bond, 25 F.3d 1566, 1578, 30 USPQ.2d (BNA) 1911, ___ (1994) held that "the mere filing of such an affidavit or declaration (37 CFR 1.131) does not constitute an admission that the reference sought to be antedated renders the invention in question unpatentable." (cite to 37 code added). The court stated that the PTO does not impose the burden of overcoming with argument prior art which is to be antedated with a section 1.131 affidavit. Id at 1577. Accordingly, claims 1-5, 7-8, 10-16, 19-22, 24, and 26 are believed 15 patentable over the art made of record. Withdrawal of this rejection is respectfully requested.

In Section 8 of the Office Action the Examiner indicated that claim 23 is allowed. In Section 9 of the Office Action, the Examiner indicated that claims 17-20, 18, 25, 31 and 33 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant wishes to thank the Examiner for the allowance of these claims. Because Applicarit has submitted a declaration with evidence to antedate the Honda and Hirotsune 25 references, Applicants believes that claims 1-33 are patentable over the art made of record and has not amended claims 17-18, 25, 31 and 33 at this time.

Applicants believe their claims as amended are patentable over the art of record, and that the amendments made herein are within the scope of a search 30 properly conducted under the provisions of MPEP 904.02. Accordingly, claims 1-33 are deemed to be in condition for allowance, and such allowance is respectfully requested.

If for any reason the Examiner finds the Application other than in a condition for allowance, the Examiner is respectfully requested to call Applicant's undersigned representative at the number listed below to discuss the steps necessary for placing the application in condition for allowance.

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The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 08-2025. Should such fees be associated with an extension of time, Applicant respectfully requests that this paper be considered a petition therefore.

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